

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 3, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP681

Cir. Ct. No. 2012CV234

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

WELLS FARGO BANK, N.A.,

PLAINTIFF-RESPONDENT,

v.

**PAUL J. FRETSCHEL, AN INDIVIDUAL AND MAZIE THERESA MILES
FRETSCHEL, AN INDIVIDUAL,**

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Lincoln County:
ROBERT R. RUSSELL, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Paul and Mazie Fretschel, pro se, appeal an order dismissing a counterclaim in a foreclosure action.¹ We affirm.

¶2 Wells Fargo Bank, N.A., commenced the foreclosure action after the Fretschels defaulted under a note and mortgage. The Fretschels filed several papers answering the complaint. Wells Fargo subsequently moved for summary judgment. The circuit court found no genuine issue of material fact, noting an absence of opposing affidavits on file. The court entered a foreclosure judgment on February 7, 2013.²

¶3 Nearly a year later, on January 24, 2014, the Fretschels filed a pleading construed as a counterclaim.³ Wells Fargo moved to dismiss the counterclaim, which the circuit court granted. The Fretschels now appeal.

¶4 The Fretschels' briefs to this court are difficult to understand. The arguments are not cogently developed. In addition, the Fretschels fail to provide citations to the record on appeal, in contravention of the requirements of WIS. STAT. RULES 809.19(1)(c), (d) and (e).⁴ The citation to caselaw is primarily to non-Wisconsin cases or statements of generally accepted principles. The appendix also contains "attachments" without accompanying record citations.

¹ Mazie Fretschel did not sign the counterclaim. Both Paul and Mazie Fretschel appealed the circuit court's dismissal of the counterclaim. We refer to the Fretschels jointly throughout this decision wherever practicable.

² The Honorable John M. Yackel signed the foreclosure judgment.

³ The document was entitled, "Action-At-Law Adversary Proceeding and Request For 'Quiet Title' Only."

⁴ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 The Fretschels assert in their reply brief that they are subject to less stringent rules because they are self-represented. However, we generally hold pro se litigants in civil matters to the same appellate rules as attorneys. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 451, 480 N.W.2d 16 (1992). Considered together, the Fretschels' noncompliance with the rules is such that we could dismiss the appeal on that basis alone. *See* WIS. STAT. RULE 809.83(2). Regardless, we conclude the circuit court did not err by dismissing the counterclaim.

¶6 The Fretschels challenge subject matter jurisdiction, but Article VII of the Wisconsin Constitution prescribes a broad grant of general jurisdiction for Wisconsin circuit courts. *See* WIS. STAT. § 753.03. This jurisdiction clearly includes the power to hear foreclosure actions as well as associated counterclaims. *See, e.g.,* WIS. STAT. § 846.01(1).

¶7 Moreover, the Fretschels' appeal reiterates arguments concerning Wells Fargo's standing to foreclose on the mortgage. The circuit court found no genuine issue of material fact, and the grant of summary judgment was never appealed.⁵ The Fretschels were provided with written notice of entry of judgment,

⁵ The motion for summary judgment was filed several months after the commencement of the action, and the scheduling order on summary judgment provided for responsive briefs and affidavits in opposition to summary judgment to be filed within thirty days of the summary judgment motion. The Fretschels insist Wells Fargo failed to produce the "original, properly endorsed Note." However, Wells Fargo averred by affidavit in support of summary judgment that it was the holder of the note and entitled to collect on the debt owed by the Fretschels. As the circuit court recognized, the Fretschels failed to submit affidavits in opposition to the motion for summary judgment. The record fails to show the Fretschels adequately sought to compel discovery prior to summary judgment, to amend the scheduling order, or otherwise sought a continuance to allow further written discovery to be had, depositions to be taken, or affidavits to be obtained. In any event, the time to appeal the final judgment of foreclosure had long passed prior to the filing of the counterclaim.

(continued)

thereby triggering a forty-five-day period in which to appeal. *See* WIS. STAT. § 808.04(1). But even if the Fretschels had not been provided written notice of judgment, the ninety-day period in which to appeal had expired long before the counterclaim was filed. *Id.* To the extent the counterclaim may be viewed as a back door appeal of the summary judgment, it was untimely.

¶8 The counterclaim was also barred by the doctrine of claim preclusion. This doctrine “provides that a final judgment on the merits in one action bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences.” *See Kruckenberg v. Harvey*, 2005 WI 43, ¶19, 279 Wis. 2d 520, 694 N.W.2d 879. When claim preclusion is applied, “a final judgment on the merits will ordinarily bar all matters which were litigated or which might have been litigated in the former proceedings.” *Id.* (citation and punctuation omitted). Here, the counterclaim arose between the same parties, and the circuit court had already entered a final judgment of foreclosure on the merits concerning claims arising out of the same facts or transactions. Accordingly, the circuit court correctly dismissed the counterclaim.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

The Fretschels also appear to argue the note was “satisfied in full” because it was “sold, assigned and/or transferred” to another entity. The argument is inadequately supported by citation to legal authority or citation to the record on appeal and will not be addressed. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).